

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

NESTOR CHAVEZ,

Plaintiff,

v.

No. CIV 00-307 WJ/KBM-ACE

CITY OF ALBUQUERQUE, et al.,

Defendants.

**MEMORANDUM OPINION AND ORDER DENYING
DEFENDANT LEHOCKY'S MOTION FOR PARTIAL SUMMARY JUDGMENT IV**

THIS MATTER comes before the Court on Defendant Officer Lehocky's Motion for Partial Summary Judgment No. IV: Dismissal of Plaintiff's Fourth Amendment Claim that the Use of a Police Service Dog to Bite a Suspect Constitutes the Use of Deadly Force [Docket No. 71]. In his motion, Officer Lehocky seeks a determination of the Court that the use of a police service dog to bite Plaintiff was not deadly force. Plaintiff's response points out that Plaintiff's Complaint is properly read to state a claim for the use of excessive force; none of the claims is entitled "Use of Deadly Force." Plaintiff further states that "Lehocky's attack on a supposed deadly force claim therefore represents an attack on a phantom." The Court agrees and finds that Officer Lehocky's motion seeks to dismiss a claim that has not been made.

IT IS THEREFORE ORDERED that Defendant Lehocky's Motion for Partial Summary Judgment IV [Docket No. 71] is hereby DENIED.



UNITED STATES DISTRICT JUDGE